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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,347	09/25/2001	J. Fernando Bazan	DX0903K1	9754
28008	7590	10/14/2005		
DNAX RESEARCH, INC. LEGAL DEPARTMENT 901 CALIFORNIA AVENUE PALO ALTO, CA 94304			EXAMINER CHERNYSHEV, OLGA N	
			ART UNIT	PAPER NUMBER
			1649	

DATE MAILED: 10/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/963,347

Applicant(s)

BAZAN ET AL.

Examiner

Olga N. Chernyshev

Art Unit

1649

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21 and 33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21 and 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 02, 2005 has been entered.

Formal matters

2. The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 1649.

Response to Amendment

3. Claims 22-32 have been canceled and claim 33 has been added as requested in the amendment filed on August 02, 2005. Following the amendment, claims 21 and 33 are pending in the instant application.

Claims 21 and 33 are under examination in the instant office action.

4. The Text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Any objection or rejection of record, which is not expressly repeated in this action has been overcome by Applicant's response and withdrawn.

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6. Applicant's arguments filed on August 02, 2005 have been fully considered but they are not deemed to be persuasive for the reasons set forth below.

Claim Rejections - 35 USC § 102

7. Claims 21 and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Sims et al. (US Patent 6, 555, 520, April 29, 2003, filed May 9, 2001) for those reasons of record in section 11 of Paper mailed on December 08, 2003 and in section 8 of Paper mailed on August 02, 2004.

Briefly, claim 21 is directed to an isolated polypeptide encoded by a nucleic acid of SEQ ID NO: 3 and claim 33 is directed to an isolated polypeptide encoded by a nucleic acid of SEQ ID NO: 1. Sims et al. document discloses polynucleotide sequences that have 100% identity to the instant SEQ ID NO: 1 and 3, see a copy of the printout of the sequence alignment attached to the office action mailed on December 08, 2003. Thus, Sims et al. anticipate the instant claims 21 and 33.

With respect to the priority date of the instant application, Applicant is advised that because the specific, substantial and credible utility of the instant IL-B50 polypeptides is only disclosed in the instant specification, the effective filing date for the instant invention is determined as the filing date of the instant application, 09/25/2001, which makes patent of Sims et al. a proper 102(e) reference.

8. Applicant's suggestion to declare "an interference between the present application and the '520 patent" (bottom at page 3 of the Response) has been fully considered and will be addressed in full upon submission of an official request for interference.


Conclusion

9. No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olga N. Chernyshev whose telephone number is (571) 272-0870. The examiner can normally be reached on 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet L. Andres can be reached on (571) 272-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Olga N. Chernyshev, Ph.D.
Primary Examiner
Art Unit 1649

October 3, 2005